

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-31, 33, 34, 37, 38 and 59-76 are presently active in this case. The present Amendment amends Claims 24, 33 and 65-66; and adds Claims 69-76.

The outstanding Office Action rejected Claims 1, 4, 7-11, 15, 16, 18-20, and 65 under 35 U.S.C. § 102(e) as anticipated by Bocola (U.S. Patent Publication No. 2005/0167388). Claims 2, 3, 5, 6, 21, and 66-68 were rejected under 35 U.S.C. § 103(a) as unpatentable over Bocola. Claims 22-23 were rejected under 35 U.S.C. § 103(a) as unpatentable over Bocola in view of Dreschler et al. (U.S. Patent No. 6,071,503). Claims 24-31, 33, 34, 37, 38, and 59-64 were rejected under 35 U.S.C. § 103(a) as unpatentable over Bocola in view of JP 63-129512.

In order to clarify Applicant's invention, Claims 24, 33 and 65-66 are amended. Claim 24 recites that the ball joint is positioned *entirely above the peripheral portion* such that the peripheral portion is pivotable about the at least one axis *at a point of rotation located at a distance from the peripheral portion between the lid and the peripheral portion*. Claim 33 recites that in the closed position, the peripheral portion of the cover member bears against an edge of the first compartment so as to seal the first compartment, and wherein *the ball joint separates the peripheral portion from the lid so that the peripheral portion does not contact the lid when the peripheral portion seals the first compartment in the closed position*. Claim 65 (66) specifies that the sealing element is rotatable *around the ball joint (pivot)* about at least two mutually perpendicular axes of rotation. These features find support in the disclosure as originally filed, for example in Figs. 1 and 5-12; at page 4, paragraph [0033]; at page 5, paragraphs [0034]-[0035], [0037]; and at page 6, paragraph [0048].

In order to vary the scope of protection recited in the claims, new dependent Claims 69-76 are added. New Claims 69-76 find non-limiting support in the disclosure as originally

filed, for example in Figs. 1 and 5-12; at page 4, paragraph [0033]; at page 5, paragraphs [0034]-[0035], [0037]-[0038]; and at page 6, paragraphs [0048]-[0049]. Therefore, the changes to the claims are not believed to raise a question of new matter.¹

In response to the rejections of the claims under 35 U.S.C. § 102(e) and 35 U.S.C. §103(a), and in light of the present Amendment, Applicant respectfully requests reconsideration of these rejections and traverses the rejections, as discussed next.

All of the rejections are based, at least in part, on the Bocola patent. This reference discloses a jar 1 that includes a holding body 2, defining an inner vessel 3 and an outer mantle 4 extending from the mouth 5 of the inner vessel 3 and ending under the bottom 3a of the inner vessel 3. A closure cover 10 is applied for closing the mouth 5. The cover 1 includes an undercover washer element 20.

Claims 1-23 and 59-65 are rejected as being anticipated by the Bocola patent based on the assertion that the Bocola undercover washer element 20 meets the claimed sealing element that is rotatable about *at least two* mutually perpendicular geometrical axes of rotation, as required by Claim 1.² Applicant respectfully disagrees because the Bocola undercover washer element 20 is *not* rotatable about at least two mutually perpendicular geometrical axes of rotation. The Bocola undercover washer element 20 is held in position by (a) the head 26 that engages the opening 25, and (b) *an abutment with the edge or rim 28 of the cover 10*. See page 2, paragraph [0028]. The abutment of the undercover washer element 20 with the rim 28 of the cover 10 prevents the undercover washer element 20 from rotating around the X and Y axes. At most, the undercover washer element 20 may rotate around the Z axis passing through the peg 27.

¹ See MPEP 2163.06 stating that "information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter."

² Outstanding Office Action at page 2, lines 3-7 of last paragraph.

Therefore, the Bocola patent fails to disclose every feature recited in Applicant's claims, so that 1, 4, 7-11, 15, 16, 18-20, and 65 are not anticipated by the Bocola patent. Accordingly, Applicant respectfully traverses, and requests reconsideration of, the 35 U.S.C. § 102 rejection based on the Bocola patent.³

Claims 2, 3, 5, 6, 21, and 66-68 are rejected based on the same assertion regarding the Bocola undercover washer element 20.⁴ Thus, the rejection of these claims is similarly traversed.

Independent Claim 24 does not require rotation about *two* axes. Claim 24 requires a peripheral portion that is pivotable about *at least one* axis passing through a central portion that includes a ball joint in a receptacle. The rejection of Claim 24 is based on the assertion that the Bocola head 26 engaged in the opening 25 of the undercover washer element 20 meets the claimed pivot and ball joint. Applicant respectfully requests reconsideration of this rejection because amended Claim 24 now requires that the ball joint is positioned *entirely above* the peripheral portion such that the peripheral portion is pivotable about the at least one axis at a *point of rotation located at a distance from* the peripheral portion between the lid and the peripheral portion. In the Bocola jar, the head 26 passes through the opening 25 in the undercover washer element 20 so that the head 26 is not positioned entirely above the undercover washer element 20 such that the undercover washer element 20 is pivotable about an axis at a point of rotation located at a distance from the undercover washer element 20 between the cover 10 and the undercover washer element 20. Thus, the rejection of Claims 24-31 and 37-38 based on the Bocola patent is believed to be overcome by the present Amendment.

³ See MPEP 2131: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," (Citations omitted) (emphasis added). See also MPEP 2143.03: "All words in a claim must be considered in judging the patentability of that claim against the prior art."

⁴ Outstanding Office Action at page 3, lines 1-3 of last paragraph.

Claim 33 requires a peripheral portion that bears against an edge of the first compartment so as to seal the first compartment. The rejection of Claim 33 is based on the assertion that the Bocola undercover washer element 20 meets the claimed peripheral portion. Applicant respectfully requests reconsideration of this rejection because amended Claim 33 now requires that in the closed position, the ball joint separates the peripheral portion from the lid so that *the peripheral portion does not contact the lid when the peripheral portion seals the first compartment in the closed position*. In the Bocola jar, the undercover washer element 20 is held in position in the closed position by abutment (i.e., by contact) with the edge or rim 28 of the cover 10. See page 2, paragraph [0028]. Thus, the rejection of Claims 33-34 based on the Bocola patent is believed to be overcome by the present Amendment.

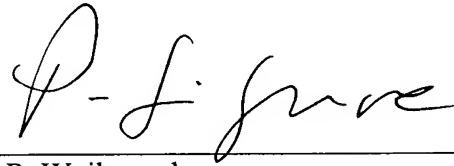
The applied references, either individually or in combination, also fail to disclose the features of the dependent claims, for example new dependent Claims 69-76 in combination with the features recited in their respective independent claims.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 1-31, 33, 34, 37, 38 and 59-76 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Steven P. Weihrouch
Attorney of Record
Registration No. 32,829

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

Philippe J.C. Signore, Ph.D.
Registration No. 43,922